THE OCTOROON IN COURT.

United States Circuit Court. Before Hon. Judge Ingersoll

APPIDAVITS AND COUNTER APPIDAVITS-LETTERS NTER LETTERS -INTERESTING THEATRICAL MOTION FOR TEMPORARY INJUNCTION

The United States for this Southers District of New York, a resident of the State of New York, brings this his bill against Thomas C. Fields, and Willam Steart, an allen, and complains and says.—That he is a dramatic author, and has been for a series of years engaged in the profession of dramatic composition; that in the fall of 1869, and anterior to the 12th day of December, 1859, he wrote and composed a drama for the stage, sutted the "Octoroon, or, Life in Louisiana," the said drama being in five acits; that he was and is the sole author thereof. And your orator further shows that the defendants, Fields and Start, are respectively the trusted and lessee and preprietor of a theatre, known as the winter Garden, which is open for public entertainment, and that the same, and the entertainments therein given, ace, and at the times hereiza far mentioned were, under the control and direction of the defener Garden, which is open for public enterment, and that the same, and the entervinments
sin given, are, and at the times hereinafter mentioned
s, under the control and direction of the defens Fields and Stuart, this complainant being at said times
s manager thereof. And your orator further shows,
on the sixth day of Decomber, 1889, he had in hu
cesion the manuscript of the said play, and as the
smanager as aforesaid, and in pursuance of his
sra, he permitted the aforesaid drama to be produced at
Winter Garden, and permitted from night to night
serformance until the thirmenth of December, 1889,
sive, that on the twelfth day of December, 1889,
sive, that on the twelfth day of December, 1890, at
hime and for many years previous, he had been a resiof the State of New York, he deposited in due form
er the laws in regard to copyrights, in the office of the
z of the District Coort for the Southern District of
York, the tide of the said drams, the right whereof
laims as author and proprietor, a certificate of which
reunto annexed, marked A and made a part of this
and that he fully compiled with the requirements of
acts for securing to binnelf the copyright of the said
as. And your orator further shows that, during the
act of three weeks prior to the fourteenth day of
December, constant negotiations and efforts were
g made by your orator further shows that, during the
ervices of Agnes Robertson Bourcicault, the wife of
orator, as an actress, together with the use of the
drama, were to be furnished and rendered to the mament of the said Winter Garden, and that the said
seement, the defendants Fields and Stuart, were to pay
allow therefor to your orator, as compensation, a sum
if to the one half of the excess of the weekly receiptu
to the one half of the excess of the weekly receiptu
es and theatre, after the sam of \$1,800 should have
been deduced for expenses. That during the fart
ind week said arrangement was assented to by the deants, Fields and Stuart, and solutement had in accoris therewith; but that your and week said arrangement was assented to by the de ants, Febias and Steart, and settlement had in according to the control of and allow your orator to continue to act in his capacity as actor and stage manager, or to have further connection or employment at the theatre. And your orator further respectfully shows, that the defendants, designing and intending to defraud him, and in disregard of his rights of the continue to represent your orator? Moreover, continue to represent your orator; a Moreover, and have nightly singet that date caused the same to be publicly enamined that they still persist in continue and have nightly singet that date and but they still persist in continue and have nightly singet that date and but they still persist in continue and have representations, and have publication, in utter vivo me for continued future representation, or the rights under the copyright aforesaid. And pure orator further shows, that the drama representation or an expectation of the play of the political bearing, but only to use its dramatic elements; but on the first public representation of said play the public and the press insisted, to the chagrin and disappointment of your orator, on ascribing a political significance to the incidents of the play of which your orator was unconscious when composing said play, and that the representation of the play at the present time is obsolved to public and that the representation has produced much censure from the press of the city and country pop your orator as its author. A great number of communications have been addressed to your said corator and to his wife requesting the withdrawal of the play, and remembrating against the same; that its effects have been, and by the acts of the defendants have been action, and an expensession of a copy of the manuscript of said play, the property of your orator san

ter Garden, and not to be responsible for the Habilities thereof, but claims to have an entire control and direction thereof. The exact nature and extent of his trusteeship your orator is ignorant of, and cannot, therefore, more particularly designate the same; the other defendant, Wm. Stoart, is wholly insolvent and unable to respond in damages for the aforesaid wrong and injury committed by him. And your orator charges and verily believes, that Thomas C. Fleids and William Stuart, the defendants, unless restrained and enjoined by the due process of this honorable court, will continue to act, perform or represent your orator's drams, without your orator's onesent, at the Wilner Garden or elsewhere, to the great and irreparable damage of your orator and his rights in the present your orator and this rights in the present your orator and the right and title to the drama as the author and proprietor thereof, and of the said copyright thereof, has, by reason of the premises, the sole right to act, perform or represent the same, and to permit it to be a cated, performed or represented. And your orator further shows, that he is greatly injured and damnified in respect to the profits, other advantages and benefits which belong to the exclusive performance of the drama, and will be greatly injured and damnified if the said defendant he not restrained from the performance thereof, all which actings, doings, pretences and refusals are contrary to equity and good conscience, and tend to the manifest injury and wrong of your orator in the premises—in consideration thereof, and for as much as your crator can only have adequate relief in the premises in this court to the end therefore, that the defendants may, if they can, show cause why your orator should not have the relief prayed for, and may, on their respective corporatorator sherionance, information and belief, full, true, direct and perfect answers make to such of the interrogatories hereinanter numbered and set forth, as by the note hereunder written they are requir

the note herounter written any viz.—

1. Whether the defendants, or either of them, and it so, which, have not a manuscript copy of a drama in five acts entitled the "Octoroos, or Life in Louisiana"? and if so, from whom was the same procure!?

2. Was not the said manuscript play put in rehearsal at the said Winter Garden, and publicly produced on the stage of said theatre on the night of the Fixth of December, 1859?

stage of said theatre on the night of the sixth of December, 1859?

3. Was it not nightly enacted at the said theatre on every night when the said theatre was open to the public, until the fourteenth day of December, 1859?

4. Was it not also represented on the night of the 14th, 16th and 16th of December, 1859, and subsequently thereto, at said theatre?

5. Was not said play publicly announced by you, or one of you, or the bills of the said theatre, for the 14th and 16th of December, 1859, and in the advertisement of said days, as the play of 19on Bourcicault? and did you or one of you not announce that it would be performed every night thereafter at said Winter Garden, until further notice?

of you not announce that it would be performed every night thereafter at said Wintor Gardon, until further controls.

6. If it was represented or produced, was it under any agreement and if so, is the complainant to receive any compensation for such representations, or any or either of them? and if so, what, and how much, and when!

And that the said defendants may be restrained by the fujunction of this homerable four from the public performance or representation of your crator's orans, entitle Court, or causing the same to be performed by the dramatic company whils the jurislation of this court, and that the said Wintor Gardon or elsewhere, or any other dramatic company whils the jurislation of this court, and that the defendants may be ordered to keep and render an account of the receipts or proceeds of the performances of the drama already had since and in hading the 14th day of December, 1859, and of such performances of the drama already had since and in hading the 14th day of December, 1859, and of such performances of the same as may be realted by the ordered to surroutee and deliver, by said defendants, and to pay over the same to your order, and that they so ordered to surroutee and deliver, by said defendants, and to pay over the same to your order, and that they so ordered to surroutee and deliver, by said defendants, and to pay over the same to your order to the performance of the further relief in the promises, and to pay over the same to your order to the performance of the further relief in the promises, and to the real performance of the client of the performance of the cli

R. E. Striwell, United States Commissioner. e follows a certificate of copyright, dated Dec. 12,

the said party of the first part to have the whole, sole and uncontrolled management of the stage in all its departments, with full powers to discharge legally and for good cause, from the employment of said party of the second part, all persons employed, whether artists or servants, in the department of said party of the first part; that all bills, ambouncements and salverlisements of overy description relating to said theatre, shall be made and done by said party of the first part alone, but said party of the second part shall always have a veto upon all solections of entertainments and announcements; but said party of the first part is not authorized to meur any expenses on behalf of said theatre, or to give or permit to be given therein any performances against the wish of the party of the first part, ahall during said term be engaged, employed and play as an actress for a period of ten weeks in the fall and six weeks in the spring of each year, during the term hereby granted; but in case the recepts of any ten consecutive nights of such engagement of the said wife of said party of the first part shall in their gross amounts be less than four thousand doilars, then said party of the second part shall have the right to terminate that engagement within six nights thereshall in their gross amounts be less than four thousand doilars, then said party of the second part shall have the right to terminate that engagement within six nights thereshall in their gross amounts be less than four thousand doilars, then said party of the second part to give written notice on the sait of duiy in each year when the fall engagement is to commence, and on the lat day or January in each year when the spring engagement is to commence, and on the lat day or January in each of the sead party of the first part filteen days notice in writing proviously to the termination of each or any engagement, but such prolong each of these engagements for such further time as he may desire by giving to the said party of the first part filteen d

whose favor the said finding and award shall be given snai be at liberty to enter judgment on the same, in this Supreme Court, without any further. Tollice to the "there", and no legal steps will be taken or penalties incurred as between the said parties until such arbitration thall have been had, and a decision thereunder obtained. In witness whereof the parties hereto have berëunte set their names and scals on the day and year first above written

W. STUART
DION BOURCICAULT.

Scaled and delivered in presence of Those CRESHAN.

PUBLIC ADMINISTRATOR'S OFFICE, 271 BROADWAY, New York, Nov. 26, 1859.

D. BOUNGICAULT: D. BOURGICAULT:—
MY DRAK SIN—Will you have the kindness to send me
a statement of the expenses, as you make them up, so as
not to exceed eighteen hundred dollars per week. Yours
THOS. C. FIELDS.

| The contest of the

management of the Winter Garden was included in the ergagement of your wife, and the use of your pieces, she having declined to appear to night in "The Octoroos," uncoubsedly under your direction, is a palpable violation of your contract. Besties, the course you have pursued in your department has led to disorder and unpleasantness in the company and, above all, you have apparetly been actuated with a desire to break down the theatre, to compass some purpose of your own. You have secured to forget that there was any other interest than your own to be conserved. It is, therefore, nonessary that you should give place to some other person as stage director. You will please take notice that your services as stage director coses from the receipt of this notice. I have appointed another person to the position. Yours, &c.,

Trustee of the Winter Garden.

WEDNEMBAY, Dec. 14, 1859.

My DEAR Sin—Mr. Stuart has han ied me your note, the contents of which surprise me. You have entered into an engagement with me to give the services of your wife, yourself and pieces on certain terms which, by your acceptance of these terms, you have to-day under your own hand ratified. It now require Mrs. Bourcicanit and yourself to perform in sald pace, the "Octoroon," this eventiog, and shall await your asswer till six o'clock.

own band ratified. I now require Mrs. Bourcicault and yourself to perform in said pace, the "Octoroon," this evening, and shall await your answer till six e'clock, when, if no satisfactory answer be received, I shall proceed to make such alrangements as may become necessary by reason of your refusal. Yours, So., Sary by reason of your refusal. Yours, So., THOMAS C. FIELDS, Trustee of the Winter Garden. The injunction argument will be heard on Wednesday. Mrs. agams Rosesman in Account with white Garden. The injunction argument will be heard on Wednesday. Mrs. agams Rosesman in Account with white Garden. The injunction argument will be heard on Wednesday. Hers agams Rosesman in Account with Sary Britan Garden. Less one week's advertising. Sary 60 Less one week's gas bill. Say 60 212 00 Less amount as agreed on. 125 00 212 00 Less one week's supernum'es. 71 60 Less amount as agreed on. 25 00 46 00 — 2,073 10 46 00 2,078 10

Total ... \$2,255 90 Miss A. Robertson and piece half share, \$1,127 96. Nkw York, Dec. 14, 1859. F. NASOR, Treesurer. Er. &. C. E. owing affidavits and the exhibits attached:-

AFPIDAVIT OF THE PUBLIC ADMINISTRATOR

closed first, and a substitute of the anternament, including that for the anternament, including a plaint of the anternament, including a complaint of the action of the plaintiff and anternament, including a complaint of the plaintiff and the places and the contract of the contract were the said proposition, and the terms of the contract were the settled between the parties on the 10th day of October, 1859; within a few days after plaintiff suggested to the deponent that the contract thus concluded should be assented to by Stuart, and appointed the hour of eleven the deponent that the contract thus concluded should be assented to by Stuart, and appointed the hour of eleven (Field) had an interview, at which Bourdcault rectted the agreement as having been concluded on 18th of October, 1859, and then said. "Now, gentlemen, I wish to understand from you distinctly whether I am to consider the agreement as having been concluded to Stuart: "What do wher aupon the deponent (Field) said to Stuart: "What do year, year," to which Stuart replied, "Certainly; I said to all parties," and deponent said whereaupon the deponent (Field) said to Stuart: "What do year, year," to which Stuart replied, "Certainly; I said to all parties," and deponent said the a distinct and binding agreement between us," the farces—"Conjugal Lessons" and "Rathor Excitor"—for that evening.

Harriet Secor says that she is an actrees, and has been accounted in the Gotto-where Garden; that she has each of the year large that she has an actrees, and has been accounted to the contract were the second of the part in the farces—"Conjugal Lessons" and "Rathor Excitor"—for that evening.

Harriet Secor says that she is an actrees, and has been accounted to the contract were the contract were the second of the theory of the wind proposition. The farces—"Conjugal Lessons" and "Rathor Excitor"—for that evening. the agreement as having been concluded on 18th of October, 1859, and then said: "Now, gentlemen, I wish to
understand from you distinctly whether I am to consider
this a distinct and binding agreement between us;"
wheresupon the deponent (Field) said to Staart: "What do
you say, "shart?" to which Staart replied, "Cretainly; I
think it sais to all parties," and deponent said
to plaintif, "We accept, your proposition, I consider that as agreed," to which the plaintif,
replied, "Then, gentlemen, that is a bargain,"
that abods one week after the contract was made, anmatiet, the plaintif produced for the use of the theatrs a
burlesque, entitled "Chamoun," which proved memocrosful; after the faiture of that plece Bourcasait sent for deponent and Stuart, and stated that he desired to consult
with the management as to what should be done; that he
(Fields) and Stuart accordingly had an interview with the
plaintif, who stated that he had prepared nothing which
could then be produced to inke the place of "Chamoun,"
and that "some stop gap:" must be procured "to carry us
over the trough of the sea," until the "Cotoroon" could
be got ready; whereupon the deponent asked the plaintif how
long he would require to get the "Cotoroon" could
be got ready; whereupon the deponent asked the plaintif has with the
distinct andorelanting that he would awrite the
(Frelds) would in consideration carry the theatre, and
(Frelds replied, "Very well, get it ready as soon as part
on a stated with the 2d any of Cotober, 1859, and in pursuance
of this agreement Fields that he had quered; to which
Fields replied, "Very well, get it ready as soon as you
can," the plaintiff responded that he would have it ready
by the first week in December; this last conversation was

act in the larces—"Conjugal Legsons" and "Rather Excited"—for that evening.

AFFIDAVIT OF MISS SECOR

Harriet Secor says that she is an actress, and has been for some time engaged in the Winter Garden, that she has played the part of Thibedeau in the play of the "Octoroon;" that she has frequently spoken with acquaintances from the Southern States on the subject of the play, and has nover heard from any of them, or from any one else, any expression of disapprobation of the same, or any of the sentiments or characters therein; that, on the contrary, ahe knows that many of her acquaintances from the Southern States have frequently attended the representation of the play, and expressed themselves pleased with it; she never entertained, and does not now entertain, any apprehension of receiving any threat or inducement to deter or dissuade her from playing in said place, and she does not believe that any threat was really made, or intended to be made, to or against any of the artists employed now or at any time in the play.

AFFIDAVIT OF MR. CLESHAM.

ment to deter or dissuade her from playing in said piece, and she does not believe that any threat was really made, or intended to be made, to or against any of the artists employed now or at any time in the play.

APFIDAVIT OF MR. GLESHAM.

Thomas Clesham says that he is one of the employes in said winter Garden; that it is his duty to take charge of that house during the day time, when no performances are going on; on the evening of December 14 deponent had charge of the stage door; Mr. Bourcleault, accompanied by his wire, applied to him for admission at the stree door at ten minutes past six o'olock, and not before that time, or that evening; that he, according to instruction by him received, seedined to admit them; whereupon Bourcleault and wife at once went away; that Bourcleault did not apply for admission to the theatre on that evening until the time above mentioned; and deponent further says, that other persons were near him at the stage door when Bourcleault and wife presented themselves for admission as aforesaid, and that he then and there called the attention to the exact time at which the occurrence took place.

APFIDAVIT OF GEO. W. JAMISON.

George Jamison, of Cleveland, Ohio, says, that he is an actor, and in November, 1859, he received a beiegraph despatch from Stuart, one of the defendants, requesting him to come to New York and play a part in the play of the "Octoroon," whereupon Stuart turned to Bourcleault and asked him how long its would be safe to guarantee to him (Jamison); he forther says that on another occasion Bourcleault told him that this play would, according to his belief, run three months, and in all probability would go six months.

Joseph Jefferson says that he is an actor, and has been for some time engaged in the Winter Gardon; that he was present at convergance of the failure of a play a run of two months, and Stuart bereupen guaranteed the same to him (Jamison); he forther says that on another occasion bourcleault had proposed to write, descriptive of life and inclentes in

which a stanched to the atthactive fyliodis and marked II, that Rieds long absort from two that eventure—the long of the stance of the stance

various incurs and a various agreements wis that time he has made various agreements wis cault, and that he has never known of any agreet made by Bourcicault which he (Bourcicault) either in letter or in spirit, violate, or evade by

My DEAR FRIEND—MYR. Bourcloadt declines offer. She also declines any offer whatever that is weekly settlement. I, for my part, do the sar stopped the bill for to marrow hight, and will most beare at cleven o'cleck. I have arranged anoth ment for to-morrow night, which I propose to rot the propie will be there. Yours truly.